

**DECISION**



**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-213679

**DATE:** December 2, 1983

**MATTER OF:** Boskind Development, Inc.

**DIGEST:**

Where a small business firm bidding on items in a total small business set-aside represents in the bid that the supplies to be furnished will not be manufactured or produced by a small business concern, the bid is nonresponsive.

Boskind Development, Inc., a small business, protests the Department of the Army's rejection of its bid as non-responsive under invitation for bids (IFB) No. DAAE07-83-B-B160, a total small business set-aside. We summarily deny the protest.

Section K-1 of the invitation required a firm to certify whether it is a small business and, if it is a small business but not the manufacturer of the supplies offered, whether the supplies to be furnished will be manufactured or produced by a small business. To be responsive and thus eligible for award on a set-aside, a bidder must be a small business and must agree to furnish small business items.

Each certification necessitated a mark in either of two boxes. Boskind made its certifications by placing an "X" in the appropriate boxes of section K-1. The firm placed an "X" in the box indicating that it would not furnish supplies manufactured or produced by a small business concern, and the Army rejected the bid because of that representation.

Boskind points out that there also is a diagonal mark, which appears to be an unfinished "X," in the box used to certify that the supplies to be furnished will be made by a small business. Boskind contends that since it had put marks in both boxes, and since it in fact manufactures the items solicited, the Army should not have rejected the bid.

A responsive bid is one that on its face is an offer to perform, without exception, the exact thing called for in the invitation; the government's acceptance of the offer

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therefore effectively binds the bidder to perform according to the invitation's requirements. Edw. Kocharian & Company, Inc., 58 Comp. Gen. 214. (1979), 79-1 CPD 20. The government's acceptance of a bid on a total small business set-aside that does not establish the bidder's intention to furnish only products manufactured or produced by small business, and thus is nonresponsive, would not legally obligate the firm to furnish small business products consistent with the set-aside. Rather, the contractor would be free to provide the supplies from either small or large business manufacturers as its private business interest might dictate. Mactek Industries Corp., B-211675, June 1, 1983, 83-1 CPD 592.

Even if the diagonal mark on Boskind's certification form reflects an apparent intent to be bound by the set-aside requirements, the fact is that Boskind also clearly certified that it would not furnish end items as required by the set-aside. At best, the bid is ambiguous, and where a bid is subject to two reasonable interpretations, under one of which it is nonresponsive, the bid is nonresponsive. Introl Corp.; Forster Enterprises, B-209096, B-209096.2, June 9, 1983, 83-1 CPD 633. While Boskind asserts that it manufactures the end items to be furnished, the fact is that the bid as submitted did not legally obligate the firm to furnish a small business product.

To the extent that Boskind believes acceptance of its low bid is in the government's economic interest because the firm actually is the manufacturer, the possibility that the government might realize a monetary savings by waiving a material bidding deficiency does not outweigh the importance of maintaining the integrity of the competitive bidding system by rejecting nonresponsive bids. See Marino Construction Company, Inc., 61 Comp. Gen. 269 (1982), 82-1 CPD 167.

The protest is summarily denied.

*Wilton J. Fowler*  
for Comptroller General  
of the United States